

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.13.1001A)	AMENDMENT
relating to state grain laboratory fees)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On June 17, 2006, the Montana Department of Agriculture proposes to amend the above-stated rule relating to state grain laboratory fees.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on June 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Joel A. Clairmont at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

4.13.1001A GRAIN FEE SCHEDULE (1) The effective date of this rule is July 15, 2005 ~~July 7, 2006~~.

(2) remains the same.

(a) ~~The state grain laboratory hours~~ Normal office hours are 8 a.m. to 5 p.m. Monday through Friday. All other hours and holidays will be considered overtime.

(i) Sampling hours are 6 a.m. to 8 p.m. Monday through Saturday. Sampling hours will need to be scheduled the day before if required outside the normal office hours. All other hours and holidays will be considered overtime.

(b) through (3)(d) remain the same.

(e) submitted sample inspection (include DKT (damaged kernels total) identified, FM (foreign material) identified, SHBN (shrunken and broken kernels), and DEF (total defects)).....\$8.00

(i) through (3)(h) remain the same.

(i) additional statements: ~~e.g., foreign material (FM) identified; damaged kernels total (DKT) identified or other additional statements~~ requested by the applicant, per statement\$2.50

(j) remains the same.

(k) vomitoxin (DON) per ~~qualitative~~ quantitative analysis test\$23.50

(l) through (4)(d) remain the same.

(e) additional statements: ~~e.g., foreign material (FM) identified; damaged kernels total (DKT) identified or other additional statements~~ requested by the applicant, per statement\$2.50

(5) through (5)(j) remain the same.
(i) germination, 48 hour hydrogen peroxide, 48 hour blotter,
or 72 hour blotter, per determination\$7.00
~~(ii) chit determination, per determination.....\$8.00~~
(k) through (m) remain the same.
(n) additional statements: ~~e.g., foreign material (FM) identified;~~
~~damaged kernels total (DKT) identified or other additional statements~~
requested by the applicant, per statement\$2.50

AUTH: 80-4-721, MCA

IMP: 80-4-403, MCA

REASON: We are changing the wording from state grain laboratory hours to normal office hours to show a difference between the actual office hours and sampling hours. Sampling hours extend before and after normal business hours. This accommodation will give the elevators more flexibility to use the state grain laboratory's services.

As per 80-4-709, MCA, the department shall maintain an official testing laboratory. Producers and elevators have indicated that they would send more samples to the state grain laboratory if, for example, the damaged kernels total identified was included in the \$8.00 grading fee.

Changes to (3)(e) are being made so that we can give more factor results along with the grade results. This will include damaged kernels total identified, foreign material identified, shrunken and broken kernels, and total defects. This will give the producers/elevators an added benefit.

In (3)(i), removing the specific items listed under the additional statements (e.g., foreign material (FM), damaged kernels total (DKT) identified, etc.) is being done in that additional statements for wheat, barley, corn, flaxseed, triticale, sunflower, rye, mixed grain, oats, and canola will now be included in the submitted sample inspection section of (3)(e). Currently, the state grain laboratory receives approximately \$500 per month from the identification of foreign material and damaged kernels in these commodities.

In (4)(e), removing the specific items listed under the additional statements (e.g., foreign material (FM), damaged kernels total (DKT) identified, etc.) is being done in that additional statements for rapeseed, khorasan, safflower seed, mustard, waxy barley, and buckwheat will now be included in the submitted sample inspection section of (3)(e). Currently the grain lab takes in approximately \$200 per month from the identification of foreign material and damaged kernels in these commodities.

The fact that we have always charged a fee for these two factors has become a major problem for the state grain laboratory. Some producers and elevators have chosen cost saving measures to play a major role in their lab choice. We believe

that producers and elevators will bring more samples to the state grain laboratory and should more than make up for the combined \$700 per month loss.

While these changes appear to result in a \$700 per month loss to the state grain laboratory, it would only take about 90 more samples per month to make up the approximate \$700 per month loss of revenue. That is calculated by taking 90 samples x \$8.00 = \$720. During harvest, it might only take three farmers to send in 30 samples each, which is not uncommon, to make up the loss of revenue. Once the word is out about the fee changes and visits are made to the elevators explaining the changes, we expect this will generate more samples being graded by the state grain laboratory. Overall, it is believed the financial impact will be an increase in revenue, but the department is unable to accurately calculate it at this time.

In (3)(k), we are replacing the word qualitative with quantitative. The quantitative test gives a more precise reading of parts per million which is what producers and elevators are requesting.

In (5)(j)(i), due to the fact that some barley contracts require the 48 hour blotter or 72 hour blotter, adding these will enable producers/elevators to utilize the state grain laboratory. Since these are uncommon tests, we expect financial impact to be minimal.

In (5)(j)(ii), chit determination was removed because the state grain laboratory is no longer performing the test. Since chit determination is not a common test, we expect financial impact to be minimal.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Joel A. Clairmont at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than June 15, 2006.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Joel A. Clairmont at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. A written request for hearing must be received no later than June 15, 2006.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been

determined to be 416 persons based on a farm population of 41,610 (21,900 farms reporting cropland x 1.9 people per farm) per Montana Agricultural Statistics Service data.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the department's website at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Timothy J. Meloy
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, May 8, 2006.